



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: MAY 21 2002

Person to Contact:

Employer Identification Number:

Contact Telephone Number:

Fax

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on the attachments to this letter.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code. However, we have concluded that you do not qualify under another subsection.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a Trust, or Form 1120 if you are a corporation or an unincorporated association. Contributions to you are not deductible under section 170 of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues." The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides, in part, that:

A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that

[REDACTED]

the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

Please be sure to address any correspondence in this matter to the following address:

Internal Revenue Service
Department of the Treasury
TE/GE, EO Review
PO Box 2508, Room 6417
Cincinnati OH 45201

If we do not hear from you within the time specified, this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(c) of the Code.

Sincerely,

Steven J. Miller

Director, Exempt Organizations

Enclosures:

Attachment (pages 3-4)
Form 6018
Publication 892

You were formed on [REDACTED] by verbal agreement of your founders but did not adopt a written governing document until [REDACTED], after filing your application for tax-exempt status. Your stated purposes are charitable, religious, and educational. You have requested classification as a church under Code section 170(b)(1)(A)(i).

Your founders, who also serve as your president/treasurer and vice-president/secretary, are husband and wife. You have no other officers. Your president holds a ministerial license and certificate of ordination as a deacon issued by an organization described as a church that your founders formerly attended. Your vice-president served as that church's secretary for several years, in addition to teaching. You are not currently affiliated with your founder's former church.

You currently hold worship services in your founders' home. You have indicated that these services are open to the general public, however, to date, your founders are your sole members and the only regular attendees at these services. You state that you plan to acquire a separate church facility and begin holding additional services, membership classes, and children's church after you have been recognized as exempt by the Internal Revenue Service. Your application indicated that your services are publicized by "flyers, newsletters, and word of mouth;" however, when asked to provide representative copies of newsletters and other publicity materials, you provided only a single church bulletin for a service in [REDACTED]. This bulletin refers to "expected" new members; your letter sent to us with that bulletin stated that you had no other members or attendees at that time.

Section 501(c)(3) of the Code provides, in part, for the exemption from federal income tax of organizations organized and operated exclusively for religious and charitable purposes.

Section 1.501(c)(3)-1(a) of the Income Tax Regulations provides that, in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated for one or more of the purposes specified in that section. If an organization fails to meet either the organizational or operational test, it is not exempt. Additionally, the organization must serve public, rather than private, interests.

Section 170(b)(1)(A)(i) of the Code excepts churches from private foundation status.

The Code and Regulations do not define a "church" for purposes of exemption or private foundation classification.

In the case of American Guidance Foundation, Inc. v. U.S., 490 F. Supp. 304(1980), the Court utilized fourteen characteristics in deciding whether an organization was a church within the meaning of section 170(b)(1)(A)(i). The criteria applied were as follow:

- a) a distinct legal existence
- b) a recognized creed and form of worship
- c) a definite and distinct ecclesiastical government
- d) a formal code of doctrine and discipline
- e) a distinct religious history
- f) a membership not associated with any other church or denomination
- g) an organization of ordained ministers
- h) ministers selected after completing prescribed requirements
- i) a literature of its own
- j) established place of worship
- k) regular congregations
- l) regular religious services
- m) "Sunday school" or similar religious instruction for the young
- n) schools for the preparation of its ministers

In holding that American Guidance Foundation was not a church, the court stated "It is not enough that a corporation believes and declares itself to be a church; nor is it sufficient that the applicant prepares superficially responsive

documentation for each of the established criteria." The Court found that the Foundation did not constitute a congregation because there had been no real effort to convert others beyond the immediate family. The religious instruction consisted of a father preaching to his son. The conduct of religious worship did not extend beyond the family dwelling. The organization, therefore, was engaged in a quintessentially private religious enterprise.

In Chapman v. Commissioner, 43 T. C. 358 (1967), the tax court stated that in construing the phrases "church or convention or association of churches" under section 170(b)(1)(A)(i), it was not the intent of Congress to use the word "church" in a generic or universal sense. A more limited concept was intended than that denoted by the term "religious organization." The concept of a church was intended to be synonymous with the term "denomination" or "sect" rather than to be used in any universal sense. In a concurring opinion, one judge stated that religious purposes "... may be accomplished individually and privately in the sense that oral manifestation is not necessary, but it may not be accomplished in physical solitude. A man may, of course, pray alone in his home, but, in such case, though his home may be a castle, it is not a church."

In Bubbling Well Church of Universal Love v. Commissioner, 74 T.C. 531 (1980), the Court's analysis was that the organization at all times was dominated by one individual's family. The organization had no affiliation with any denomination or ecclesiastical body, and therefore, the family was not subject to any outside influence in the control of the organization's affairs.

In Spiritual Outreach Society v. Commissioner, 927 F.2d 335 (8th cir. 1991), the court concluded that, while the organization was admittedly engaged in religious activity, the issue of central importance was that it did not have an established congregation served by an organized ministry. Accordingly, it was not a church.

In Church of Eternal Life and Liberty, Inc. v. Commissioner, 86 T.C. 916, 924 (1986) the Tax Court defined a church, for IRC 170(b)(1)(A)(i) purposes, as "a coherent group of individuals and families that join together to accomplish the religious purposes and mutually held beliefs." The court found that a two-person congregation did not satisfy the "threshold test" for church status, the associational role. The determining factor was not the number of members *per se*, but that it had not increased in size since its inception and made no attempts to attract new members.

To qualify for exemption under section 501(c)(3), an organization has the burden of showing (1) that it is organized and operated exclusively for religious or charitable purposes, and (2) that no part of its earnings inures to the benefit of a private individual or shareholder. Sec. 1.501(c)(3)-1, Income Tax Regs. Even for an organization claiming the benefits of section 501(c)(3) as a religious organization, "exemption is a privilege, a matter of grace rather than right." Christian Echoes National Ministry, Inc. v. United States, 470 F.2d 849, 857 (10th Cir 1972), cert. denied 414 U.S. 864 (1973).

Since your informal formation in [REDACTED], the number of attendees at your services has not increased. As of [REDACTED], you still had only two members, your founders/officers. You state that you plan to expand your religious activities and to make efforts to attract new members after receiving recognition of exemption. However, as indicated by the Courts in the cases discussed above, a *bona fide* congregation is a prerequisite for classification as a church. Since you do not have a membership outside of your founders, and have not made significant efforts to increase membership, we are unable to determine that you could reasonably be expected to establish a true congregation worshipping together as a church.

We have considered whether you qualify for exemption under Code section 501(c)(3) as a religious organization other than a church. However, as in the cases of American Guidance Foundation and Bubbling Well Church of Universal Love, you are a private religious enterprise serving only your founders. You have failed to demonstrate that you extend any religious or charitable services to persons outside the founders' family. Accordingly, we cannot conclude that private benefit to your founders would be incidental to public benefit.

In light of the above, we hold that you are not entitled to exemption under section 501(c)(3), of the Code, because you are not operated exclusively for public charitable and religious purposes.